



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2018-0849]**

**RIN 1625-AA00**

### **Safety Zone; The Gut, South Bristol, ME**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone for the navigable waters within a 50 yard radius from the center point of The Gut Bridge in South Bristol, ME between Rutherford Island and Bristol Neck. The safety zone is necessary to protect personnel, vessels, and the marine environment from potential hazards created during bedrock removal operations. When enforced, this proposed rule would prohibit entry of vessels or persons into the safety zone unless authorized by the Captain of the Port Northern New England or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2018-0849 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the

“Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email LT Matthew Odom, Waterways Management Division, U.S. Coast Guard Sector Northern New England, telephone 207-347-5015, email Matthew.T.Odom@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
MEDOT	Maine Department of Transportation
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

On October 08, 2014, the Coast Guard published a temporary final rule titled, “Regulated Navigation Area; South Bristol Gut Bridge Replacement, South Bristol, ME.” in the Federal Register (79 FR 60745) to enforce a regulated navigation area during bridge replacement operations. This regulated navigation area allowed the Coast Guard to enforce speed and wake restrictions and prohibit all vessel traffic through the regulated navigation area during bridge replacement operations. This rule was effective until April 30, 2017. No comments were received during the public comment period of this rule making.

On August 21, 2018, the Maine Department of Transportation (MEDOT) notified the Coast Guard that it will be removing bedrock in the areas between Rutherford Island and Bristol Neck underneath The Gut Bridge. The removal operations include removing bedrock from between the bridge abutments and areas near the navigation channel both upstream and downstream of The Gut Bridge. To remove the bedrock workers will need to utilize the waterway underneath the bridge span and prohibit people and vessels from entering the safety zone at various times. Removal operations are expected to take place between November 2018 and March 2019. However, we only anticipate a continuous 35 day full closure of the waterway. The Captain of the Port (COTP) Northern New England has determined that the potential hazards associated with the removal operations will be a safety concern for anyone transiting within a 50-yard radius of the center point of The Gut Bridge.

The purpose of this rulemaking is to ensure the safety of vessels and personnel from potential hazards associated with the removal of bedrock within a 50-yard radius of the center point of The Gut Bridge during scheduled bedrock removal operations. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

### **III. Discussion of Proposed Rule**

The Captain of the Port (COTP) Northern New England proposes to establish a safety zone from 12:01 a.m. on November 8, 2018 to 11:59 on March 31, 2019. While the safety zone would be effective throughout this period, it would only be enforced during periods of active bedrock removal operations. The safety zone would include all navigable waters from surface to bottom within a 50 yard radius from the center point of The Gut Bridge between Rutherford Island and Bristol Neck in South Bristol, ME.

During times of enforcement, no vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

The Coast Guard will notify the public and local mariners of this safety zone through appropriate means, which may include, but are not limited to, publication in the Federal Register, the Local Notice to Mariners, and Broadcast Notice to Mariners via marine Channel 16 (VHF-FM) in advance of any enforcement.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

##### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and selective enforcement of the safety zone. The safety zone will impact only a small designated portion on The Gut waterway for 143 days. This waterway is typically

transited by small recreational craft on an infrequent basis after Labor Day Weekend and prior to Memorial Day Weekend. Vessel traffic would be able to safely transit around this safety zone with a slight delay (approximately 20-60 minutes) by transiting around Rutherford Island to reach any destination on the other side of The Gut. Additionally, the safety zone will only be enforced during active bedrock removal operations necessitating closure of the waterway or during an emergency. Moreover, the rule allows vessels to seek permission to enter the zone. The Coast Guard will notify the public of enforcement of this rule via appropriate means, such as via Local Notice to Mariners and Broadcast Notice to Mariners via marine Channel 16 (VHF-FM)

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person

listed in the **FOR FURTHER INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone that would prohibit entry within a 50-yard radius of the center point of a bridge. Normally such actions are categorically excluded from further review under paragraph L60 (a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

## **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a



final rule is published.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

**PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01-0849 to read as follows:

§ 165.T01-0849 Safety Zone[s]; Safety Zone; The Gut, South Bristol, ME.

(a) Location. The following area is a safety zone: All waters of The Gut, a waterway between Rutherford Island and Bristol Neck in South Bristol, ME, from surface to bottom, encompassed by a 50-yard radius from the center point of The Gut Bridge at position 43°51.720' N, 069°33.480' W (NAD 83).

- (b) Definitions. As used in this section:

*Designated representative* means any Coast Guard commissioned, warrant, petty officer, or designated Patrol Commander of the U.S. Coast Guard who has been designated by the Captain of the Port, Sector Northern New England (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In

addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

*Official patrol vessels* means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP to enforce this section.

(c) Enforcement period. This rule will be effective from 12:01 a.m. on November 8, 2018 through 11:59 p.m. on March 31, 2019, but will only be enforced during active bedrock removal operations or other instances which may cause a hazard to navigation, or when deemed necessary by the Captain of the Port (COTP), Northern New England.

(d) Regulations. When this safety zone is enforced, the following regulations, along with those contained in 33 CFR 165.23 apply:

(1) No person or vessel may enter or remain in the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To obtain permission required by this regulation, individuals may reach the COTP or the COTP's designated representative via Channel 16 (VHF-FM) or (207)767-0303 (Sector Northern New England Command Center).

(3) During periods of enforcement, any person or vessel permitted to enter the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(e) Penalties. Those who violate this section are subject to the penalties set forth in 33 U.S.C. 1232.

(f) Notification. Coast Guard Sector Northern New England will give notice through the Local Notice to Mariners and Broadcast Notice to Mariners for the purpose of enforcement of temporary safety zone. Coast Guard Sector Northern New England will also notify the public to the greatest extent possible of any period in which the Coast Guard will suspend enforcement of this safety zone.

Dated: 21 September 2018

B. J. LeFebvre  
Captain, U.S. Coast Guard  
Captain of the Port  
Sector Northern New England  
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